Nos. 13 & 14 Orig.

Brf. of Hoehling Ley

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Filed Jan. 23, 1901.

Supreme Court of the United States.

OCTOBER TERM, 1900.

Nos. 13 and 14, Original.

EX PARTE: IN THE MATTER OF THE DISTRICT OF COLUMBIA, PETITIONER.

BRIEF IN OPPOSITION TO THE ISSUANCE OF WRITS OF MANDAMUS (FILED BY PERMISSION OF THE COURT).

BY

A. A. HOEHLING, JR.,
Attorney for Certain Parties in Interest.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1-23-'01

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

Nos. 13 and 14, Original.

EX PARTE: IN THE MATTER OF THE DISTRICT OF COLUMBIA, PETITIONER.

By permission of the court the following is submitted on behalf of certain parties whose interests are directly involved herein, as below shown, in opposition to the issuance of writs of mandamus in the above-entitled causes:

STATEMENT.

The petition in the above-entitled cause, No. 13, original, sets forth, in substance, that the Court of Claims entered judgment in favor of Thomas Kirby June 10, 1895, in the sum of $4,480.52, due and payable as of date January 1, 1876, under the provisions of the two acts of Congress of June 16, 1880 (*21 Stats., 284*), and February 13, 1895 (*28 Stats., 664*). No motion for new trial was made, as authorized by the provisions of said acts; no appeal was taken; the judgment (principal and interest) was *paid*, and it was not until more than one year thereafter that motion for new trial was filed on behalf of the defendant.

In case No. 14, original, substantially the same facts are involved, except in that case the claimants were Henry L. Cranford and Lindley M. Hoffman; the judgment was for $7,385.60, due and payable as of date January 1, 1876; the defendant first filed application for appeal, but subsequently voluntarily withdrew the same, and the judgment (principal and interest) was *paid*, more than a year prior to the filing of motion for new trial.

BRIEF.

From the above recital it will appear that in each of said cases a *final* judgment was rendered in favor of the respective claimants; that the defendant, waiving its right to file motion for new trial or to prosecute appeal to this court, elected to accept each of said judgments as final and to abide by and pay the same, and thus the judgments became absolutely final and conclusive, unreversed, and unappealed, and were actually satisfied and paid by the defendant more than a year prior to the filing of motions for new trial now under review.

It seems that about a year after the satisfaction and payment of said judgments this court, in the case of Johnson *vs.* District of Columbia (*165 U. S., 330*), involving the same law under which the judgments in the present cases had been rendered, decided that it was not proper to allow interest on the amount found to be due prior to the date of the act of February 13, 1895, and so in the Johnson case the judgment of the Court of Claims was reversed to the extent of the allowance for interest.

It thus appearing to the District of Columbia that had it prosecuted appeals in the other of said District cases (including the two involved herein) those judgments might have been, to that extent, modified, it thereupon filed the present motions, alleging that great wrong and injustice had been done to the District of Columbia because of the *error* of the Court of

Claims, and it endeavored to sustain those motions under section 1088 of the Revised Statutes.

I.

CONCLUSIVE EFFECT OF FINAL JUDGMENT OF COURT OF CLAIMS.

The Court of Claims has jurisdiction of cases and to render judgments therein only by virtue of acts of Congress granting such jurisdiction (De Groot *vs.* U. S., *5 Wall., 419*).

There is attached to the final judgments of that court a *conclusiveness* which the common law ascribes to the final judgment of all courts of competent jurisdiction (Spicer's case, *5 C. Cls., 34*).

II.

SECTION 1088, R. S. U. S., HAS NO APPLICATION TO THE MOTIONS FOR NEW TRIAL EMBRACED HEREIN.

Said section 1088 provides as follows:

"The Court of Claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may, on motion on behalf of the United States, grant a new trial and stay the payment of any judgment therein, *upon such evidence*, cumulative or otherwise, as shall satisfy the court that any fraud, wrong or injustice in the premises has been done to the United States; but until an order is made staying the payment of a judgment, the same shall be payable and paid as now provided by law."

That section, as will be observed from a mere reading, contemplated that cases might arise where a judgment had been entered against the United States, but within said period of two years, and *before* payment, *evidence* has been discovered which shows such judgment to be either a fraud,

wrong, or injustice, *in matter of fact*, as against the defendant, and where common justice and right require that the same be corrected. It is also equally apparent that that section did not contemplate that such motion for new trial should be based upon an allegation only that a judgment theretofore rendered, and which had become absolutely final and conclusive and actually satisfied and paid, was *erroneous in law* merely because in some other and subsequent, but similar, case this court had decided the law to be different from the construction placed upon it by the Court of Claims.

The relief contemplated was clearly in respect of *matters of fact*, whereby some fraud, wrong, or injustice has been done the defendant. It clearly authorizes the granting of such motion only upon *evidence*, cumulative or otherwise (*Ex parte* McKay, *30 C. Cls., 1–5*). Here the contention of defendant is that by a decision of this court, rendered in another case, more than a year after these judgments had been rendered and *paid*, it appears that said former judgments were erroneous *in matter of law*.

It has been decided, however, that resort to said section 1088 cannot be had to perform the office of an appeal; and, further, that mere error of law, where the right of appeal existed, is not a fraud, wrong, or injustice within the meaning of said section.

In Ealer's case (*5 C. Cls., 708*), the syllabus correctly states what was decided, as follows:

"Under the act of June 25, 1868 (15 Stats., 75), which authorizes the Court of Claims to grant a new trial where 'fraud, wrong or injustice in the premises has been done to the United States,' *it cannot be held that fraud, wrong or injustice has been done by an error of law when there existed an ample measure of redress by appeal.* The inconveniences of an appeal constitute no ground for the motion, and the failure to appeal, or to prosecute an appeal, under a misapprehension of their legal rights, must be deemed the defendant's misfortune."

And in the opinion it is stated:

"The judgment in this case was deliberately considered by the court after its merits had been elaborately argued by counsel. If the court committed an error of law, the defendants had a sufficient remedy, by an appeal to the Supreme Court. If an error of fact was committed, arising from inadvertence or mistake, the court was willing to correct its oversight. But the motion now made is grounded on a supposed error of law, or rather *upon a decision of the Supreme Court pronounced in another case since the judgment in this case was rendered.*"

It must be perfectly apparent that the motions for a new trial now under consideration were resorted to merely and only to perform the office of an *appeal* to correct alleged errors of law, and that they do not come within the class of new trials contemplated and provided for in said section 1088, which can only be granted—

"*Upon such evidence*, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done."

This is conclusively shown by the motions herein, which ask a new trial for the reasons:

"I. *For error of the court*, in this, that the court gave judgment for claimant * * * as due and payable January 1, 1876; the effect of which was to give interest upon the amount of said judgment from that date, whereby great wrong and injustice was done," etc.

"II. *For error of the court*, in adjudging that the amounts allowed became due and payable before the granting of the judgment herein, whereby wrong and injustice was done," etc.

See Petitions, Original, No. 13, p. 6; No. 14, pp. 6, 7.

It must, therefore, result that these motions cannot be sustained under said section 1088.

III.

THE ACT OF JUNE 16, 1880, AS ENLARGED AND EXTENDED BY THE ACT OF FEBRUARY 13, 1895, UNDER WHICH THE JUDGMENTS HEREIN WERE RENDERED, REQUIRES ALL MOTIONS FOR NEW TRIALS TO BE MADE, BY EITHER PARTY, WITHIN TWENTY DAYS AFTER RENDITION OF JUDGMENT.

Under the rules and practice of this court, motions for new trial (other than those filed under § 1088, *supra*) must be filed at the term in which judgment is rendered.

The act of June 16, 1880 (*21 Stats., 285*), providing for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on this court to hear the same, gave to the District of Columbia the same power to interpose counter-claims and offsets against claims, and defenses for fraud practiced or attempted, and all other legal defenses, and with like power of appeal as in cases against the United States tried in said court; and further provided that all laws in force relating to prosecution of claims against the United States in said court should apply, so far as applicable, to the prosecution, practice, hearing, and determination of claims against the District of Columbia authorized to be prosecuted under said act, and then added the express proviso: "*That motions for new trials shall be made by either party within twenty days after the rendition of any judgment*" (§§ 3 and 4).

The jurisdiction so conferred by this act was subsequently enlarged and extended by the act of February 13, 1895 (*28 Stats., 664*), which authorized said court to allow in said cases the rates established and paid by the Board of Public Works, and added that whenever said rates shall not have been allowed, the claimant shall be entitled, on motion made within sixty days after the passage of the act, to a new trial of such cause.

The jurisdiction thus conferred by these two acts being *special*, to be exercised only in the manner and to the extent therein limited, and having, in no uncertain terms, provided, "That motions for new trials *shall be made by either party within twenty days* after the rendition of any judgment" (*supra*), it would seem clear that said § 1088, so far as it authorizes motions for new trial to be filed within two years after the rendition of judgment, has no application whatever to said District cases, and that the only motions for new trial therein authorized should be filed, if at all, within said period of twenty days.

In the case of Childs *vs.* D. C. (*19 C. Cls., 332, 334, '5*) it was expressly held that the combined effect of the two provisions of law, namely, section 1088, Revised Statutes of the United States, and section 4 of the act of June 16, 1880, is to authorize the District of Columbia—

"'within twenty days after the rendition of any judgment against it,' to move for a new trial on the same grounds that the United States might present under the section 1088 of the Revised Statutes."

The motions for new trial here under consideration were filed more than a year after the rendition of judgment, and they therefore cannot be sustained.

IV.

THE WRIT OF MANDAMUS WILL NOT BE GRANTED IN CASES WHERE, IF ISSUED, IT WOULD PROVE UNAVAILING.

This is a fundamental principle of the law of mandamus, and may properly be applied in the present case, even should the court be of opinion that the present motions for a new trial were filed within the time limited by law.

The application of the principle just stated will be found in the following:

(*a.*) The payment of judgment is a waiver and release of all errors, and is irrevocable discharge.

As stated by the Court of Claims in Russell's case (*15 C. Cls., 168*), speaking of a judgment which had been paid:

"It is all dead, and no mere motion by either party can resuscitate it in the least degree."

The authorities are abundant upon this proposition, and as the present petitions for mandamus disclose the voluntary payment of these judgments long prior to the filing of motions for new trial, thereby, in legal effect, waiving and releasing errors, the judgments are dead and cannot be resuscitated. Hence, under such circumstances, mandamus, if issued, would be fruitless.

(*b.*) The jurisdiction of the Court of Claims, in respect of District of Columbia cases, founded upon the act of February 13, 1895, was taken away by the repealing act of March 3, 1897, and hence that court no longer has any power to further proceed in said cases.

This court, *In re* Hall (*167 U. S., 38, 43*), speaking of the effect of said repealing act, stated:

"The repeal of the act took away all jurisdiction in the Court of Claims to proceed further, so far as concerned any rights founded upon the acts so repealed."

That mandamus will not be awarded under such circumstances, see Commonwealth, *ex rel.*, etc., *vs.* Commissioners (*6 Pick., 500*).

It thus appears that the granting of the writs of mandamus prayed for in these cases would be unavailing and fruitless, *first*, because the District of Columbia has waived and released all errors by voluntarily electing to abide by

and perform the judgments, which it did by paying the same; and, *second*, the repealing act just referred to has deprived the Court of Claims of all jurisdiction to further proceed in respect of the cases so founded upon the act of February 13, 1895, in which latter class are embraced the cases here under consideration.

For all of the foregoing reasons, it is respectfully submitted that the writs of mandamus should not issue.

A. A. HOEHLING, JR.,
Attorney for Thomas Kirby et al.

WASHINGTON, D. C., *January* 23, 1901.

No. 13 Orig.

Return to rule.

Filed December 5, 1900.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 13, Original.

EX PARTE: IN THE MATTER OF THE DISTRICT OF COLUMBIA, PETITIONER.

RETURN TO RULE.

FILED DECEMBER 5, 1900.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 13, Original.

EX PARTE: IN THE MATTER OF THE DISTRICT OF COLUMBIA, PETITIONER.

RETURN TO RULE.

COURT OF CLAIMS.

In the matter of the petition of the District of Columbia for a writ of mandamus in the case of Thomas C. Kirby *v.* said District, decided in the Court of Claims on the 10th day of June, 1895, in which a judgment was rendered against said District on said day.

To the Supreme Court of the United States:

The chief justice and judges of the Court of Claims, in answer to a rule of the Supreme Court, made on the 28th day of May, 1900, to show cause why a writ of mandamus should not issue as prayed for, answering, say: That on the 25th day of February, 1897, the petitioner filed a motion for a new trial as set forth in the petition herein, and on the 19th day of March, 1900, the matter then having been brought to the notice of the court, after argument and consideration by the court, said motion was overruled by the court in an endorsement on the same, as follows, to wit:

"Overruled, the court having no jurisdiction to consider the same. The statute under which the suit was brought requires motions for new trials to be made within twenty days from the rendition of the judgment, as follows: 'That motions for new trials shall be made by either party within twenty days after the rendition of any judgment. (Act of June 16, 1880, 21 Stat. L., 285.)'"

In testimony whereof the chief justice and judges have hereunto set their hands this 30th day of November, A. D. 1900.

[SEAL.]

CHARLES C. NOTT.
LAWRENCE WELDON.
STANTON J. PEELLE.
CHARLES B. HOWRY.

(Endorsed:) Supreme Court, U. S. October term, 1900. Term No., 13, original. Ex parte: In the matter of the District of Columbia, petitioner. Return to rule. Filed Dec. 5, 1900.

10752—00

No. 14 Orig.

Return to rule.

Filed December 5, 1900.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 14, Original.

EX PARTE: IN THE MATTER OF THE DISTRICT OF COLUMBIA, PETITIONER.

RETURN TO RULE.

FILED DECEMBER 5, 1900.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 14, Original.

EX PARTE: IN THE MATTER OF THE DISTRICT OF COLUMBIA, PETITIONER.

RETURN TO RULE.

COURT OF CLAIMS.

In the matter of the petition of the District of Columbia for a writ of mandamus in the case of Cranford and Hoffman *v.* said District, decided on the 18th day of November, 1895, in which a judgment was rendered against said District on said day.

To the Supreme Court of the United States:

The chief justice and judges of the Court of Claims, in answer to a rule of the Supreme Court, made on the 28th day of May, 1900, to show cause why a writ of mandamus should not issue as prayed for, answering, say: That on the 25th day of February, 1897, the petitioner filed a motion for a new trial, as set forth in the petition herein, and on the 19th day of March, 1900, the matter then having been brought to the notice of the court, after argument and consideration by the court, said motion was overruled by the court in an indorsement on the same, as follows, to wit:

"Overruled: The court having no jurisdiction to consider the same. The statute under which the suit was brought requires motions for new trials to be made within twenty days from the rendition of the judgment, as follows: 'That motions for new trials shall be made by either party within twenty days after the rendition of any judgment. (Act of June 16, 1880; 21 Stat. L., 285.'"

In testimony whereof the chief justice and judges have hereunto set their hands this 30th day of November, A. D. 1900.

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LAWRENCE WELDON.
STANTON J. PEELLE.
CHARLES B. HOWRY.

(Indorsed): Supreme Court U. S., October term, 1900. Term No. 14, Original. Ex parte: In the matter of the District of Columbia, petitioner. Return to rule. Filed Dec. 5, 1900.

10753—00